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10/591,295

09/25/2006

Jari Kuokkanen

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EXAMINER

GHOWRWAL, OMAR J

ART UNIT

PAPER NUMBER

2416

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,295	Applicant(s) KUOKKANEN, JARI	
	Examiner OMAR GHOWRWAL	Art Unit 2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Remarks

1. This Office action is considered fully responsive to the amendment filed 4/21/09.
2. The rejections under U.S.C. 101 is withdrawn because the specification and claims have been amended accordingly.
3. The objections to the claims have been withdrawn because they have been amended accordingly.

Response to Arguments

4. Applicant's arguments filed 4/21/09 have been fully considered but they are not persuasive.
5. In response to applicant's argument that Binder discloses a virtual environment and that the virtual environment *simulates* the behavior of end-users to provide a testing environment for application developers and providers, alluding to an argument that the instant application is not virtual in nature, note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The invention of Binder contains hardware architecture and physical devices that are tested and are involved in the testing (see paras. 0031-0035, and also fig. 1, which clearly shows physical hardware components utilized in this invention).
6. Moreover, regarding simultaneous connections, in addition to figs. 1, 2, para. 0037, note para. 0052, which mentions Application Data Transmission 31 between the

Art Unit: 2416

MUD Clients Under Test 16 and the Application Servers 6. In fig. 2, the transmission is shown as *one* item 31, going from clients to the servers, and the data is shown coming out of multiple clients and going down *one* link. Furthermore, there are simultaneous *connections* as one can easily see from fig. 2 that the pathways from clients to the servers are portrayed as *being connected at the same time*, in other words, one connection is not physically set up while others are not set up (which would have been indicated by only one client connected to servers being shown in fig. 2), rather the physical connections are set up at the same time (as is indicated by the many physical connections from the clients connected to the servers).

7. Additionally, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1, 3-5, 7-9, 11-13, 15-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0156549 A1 to *Binder et al.* ("*Binder*") in view of U.S. Publication No. 2004/0003046 A1 to *Grabelsky et al.* ("*Grabelsky*").

As to **claim 1**, *Binder* discloses a testing apparatus for radio network data connections (fig. 1), comprising:

at least two radio network terminals (fig. 1, item 24),
and a host computer (fig. 1, item 18), configured to establish, by means of the at least two radio network terminals, simultaneous data connections in accordance with a Transmission Control Protocol/Internet Protocol TCP/IP protocol or a User Datagram Protocol/Internet Protocol UDP/IP protocol to at least one server connected to the radio network (fig. 1, fig. 2, para. 0035, test engineer inputs commands to terminals, simultaneous data transmission from terminals are sent to application servers (fig. 2, 31), and they are sent using TCP/IP) and to measure each established data connection separately (para. 0044, application-specific event probe 3 extracts server side states and events, fig. 2, showing application servers as under test, i.e. each server is application specific, and are probed individually (they are not one server entity, meaning they are physically separate)), by dynamically establishing a dedicated unambiguous route for each data connection (fig. 1-2, showing unambiguous routes for each connection to servers established from test engineers inputs).

Binder does not expressly disclose *wherein each data connection is established to a different public Internet Protocol IP address of the at least one server by dynamically establishing a dedicated unambiguous route for each data connection, whereby the data connections to different IP addresses travel along different routes via different terminals and their air interfaces.*

Grabelsky discloses in fig. 2, para. 0034, 0039, a conference server 108 with multiple ports. Furthermore, each port represents different IP address/RTP port combinations from different devices. Each device travels via an unambiguous different route to reach the server 108, and devices may be wireless.

Binder and *Grabelsky* are analogous art because they are from the same field of endeavor with regards to data communications.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to incorporate the various devices and IP addresses as taught by *Grabelsky* into the invention of *Binder*. The suggestion/motivation would have been to provide instant services in an IP network (*Grabelsky*, para. 0008).

As to claim 3, *Binder* and *Grabelsky* further disclose a testing apparatus according to claim 1, wherein the host computer is configured to establish the data connections as dial-up connections (*Binder*, para. 0034, devices are cellular phones (i.e. use dials to establish wireless connection, *Grabelsky*, fig. 2, devices connecting to server are SIP and mobile phones). In addition, the same suggestion/motivation of claim 1 applies.

As to claim 4, *Binder* and *Grabelsky* further disclose a testing apparatus according to claim 1, wherein the data connections established by the terminals comprise at least one of the following: data connections of one operator implemented by the same data transfer technique (*Binder*, fig. 1, para. 0035, data sent to servers is done though a router using TCP/IP), data connections of one operator implemented by different data transfer techniques, data connections of different operators implemented

Art Unit: 2416

by the same data transfer techniques , data connections of different operators implemented by different data transfer techniques (Grabelsky, fig. 2, different end devices travel through different operators with different data transfer techniques, i.e. RAS, PSDN). In addition, the same suggestion/motivation of claim 1 applies.

As to **claim 5**, see similar rejection for **claim 1**. The apparatus teaches the method.

As to claim 7, see similar rejection for claim 3. The apparatus teaches the method.

As to claim 8, see similar rejection for claim 4. The apparatus teaches the method.

As to **claim 9**, see similar rejection for **claim 1**. The apparatus teaches the process.

As to claim 11, see similar rejection for claim 3. The apparatus teaches the process.

As to claim 12, see similar rejection for claim 4. The apparatus teaches the process.

As to **claim 13**, see similar rejection for **claim 1**. The apparatus teaches the arrangement.

As to claim 15, see similar rejection for claim 3. The apparatus teaches the arrangement.

As to claim 16, see similar rejection for claim 4. The apparatus teaches the arrangement.

Art Unit: 2416

10. **Claims 2, 6, 10, 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0156549 A1 to *Binder et al.* ("*Binder*") and U.S. Publication No. 2004/0003046 A1 to *Grabelsky et al.* ("*Grabelsky*") and in further view of U.S. Patent No. 6,370,592 B1 to *Kumpf*.

As to claim 2, *Binder and Grabelsky* further disclose a router (*Binder*, fig. 1, item 2, off-the-shelf router).

The Examiner takes official notice that routing tables are well known in the art and that routing tables allow for data to efficiently transmit data to destinations.

It would have obvious to one of ordinary skill of the art to modify *Binder* and *Grabelsky* to include a routing table in order to efficiently transmit data to destinations.

Binder and Grabelsky do not expressly disclose a testing apparatus according to claim 1, wherein the host computer is configured to dynamically establish the dedicated unambiguous route for each data connection by defining a dedicated socket, netmask and gateway for each different IP address in a routing table.

Kumpf discloses a management information base MIB for an I/O device that comprises the socket, subnet mask, and gateway address. Peripheral equipment 33 is expected to know how to interpret values, i.e. take to be a table, (since it knows how to interpret, it must have a list of commands associated with values) that understands how to route like router of *Binder* based on different IP addresses of users of *Grabelsky* (col. 36, lines 28-42, table 55).

Binder, Grabelsky, and Kumpf are analogous art because they are from the same field of endeavor with regards to data communications.

Art Unit: 2416

At the time of invention, it would have been obvious to a person of ordinary skill in the art to incorporate the socket, subnet mask, and gateway address as taught by Kumpf into the invention of Binder and Grabelsky. The suggestion/motivation would have been to provide peripheral equipment with values of the I/O device (Kumpf, col. 36, lines 28-42).

As to claim 6, see similar rejection for claim 2. The apparatus teaches the method.

As to claim 10, see similar rejection for claim 2. The apparatus teaches the process.

As to claim 14, see similar rejection for claim 2. The apparatus teaches the arrangement.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2416

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR GHOWRWAL whose telephone number is (571)270-5691. The examiner can normally be reached on Monday-Thursday, 8:00am-5:00pm est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derrick Ferris can be reached on (571)272-3123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/O. G./

Examiner, Art Unit 2416

/Derrick W Ferris/

Supervisory Patent Examiner, Art Unit 2416